



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,838	11/13/2003	Jacques Durocher	86421-30	4887

7590 04/28/2005

SMART & BIGGAR  
1000 de la Gauchetiere Street West, Suite 3400  
Montreal, QC H3B 4W5  
CANADA

EXAMINER
----------

LINDSEY, RODNEY M

ART UNIT	PAPER NUMBER
----------	--------------

3765

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/705,838

**Applicant(s)**

DUROCHER, JACQUES

**Examiner**

Rodney M. Lindsey

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-44 and 47 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 45, 46 and 48 is/are rejected.
- 7) ☒ Claim(s) 6, 7 and 9-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/13/4, 3/14/5</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Spyrou et al.

With respect to claim 1 note the front portion 20 of the helmet of the helmet 10 and the occipital inner pad 40 movable by the wearer towards the occipital region of the head when the straps are fastened at 32. With respect to claim 2 note the actuator as at 36, 38. With respect to claim 3 note the outer location of actuator 36, 38. With respect to claim 4 note straps 36, 38. With respect to claim 5 note the fastening of 32 and thus the pulling of straps 36, 38 and pad 40.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3765

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 8, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holden, Jr. in view of Fournier et al. taken with Udelhofen et al. With respect to claims 1, 8 and 45 Holden, Jr. shows a helmet comprising a front portion facing a wearer's crown (see Figure 4) and an occipital inner pad 34 movable by the wearer to apply pressure on the occipital region of the head. Further with respect to claims 8 and 46 note the rear portion and the actuator 50 of the helmet of Holden, Jr. Holden, Jr. does not teach the specific use of the helmet as being for hockey. Fournier et al. teach old the use of a helmet for hockey. Udelhofen et al. supports the transfer of teachings from one helmet environment to another, as with from one sport to another (see column 3, lines 55-60). It would have been obvious to one of ordinary skill in the art at the time of the invention to form the helmet of Holden, Jr. for the sport of hockey in view of Fournier et al. to achieve the advantage of fitting one hockey helmet to various sized heads.

6. Claims 1-5 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Field et al. in view of Fournier et al. taken with Udelhofen et al. With respect to claim 1 note Figure 1 of Field et al. and the front portion of the helmet and the occipital inner pad 44 movable by the user towards the occipital region of the head. With respect to claim 48 note outer shell 12, occipital inner pad 44 and strap 30. Field et al. do not teach the specific use of the helmet as being for hockey. Fournier et al. teach old the use of a helmet for hockey. Udelhofen et al. supports the transfer of teachings from one helmet environment to another, as with from one sport to another (see column 3, lines 55-60). It would have been obvious to one of ordinary skill in the art at the time of the invention to form the helmet of Field et al. for the sport of hockey in

Art Unit: 3765

view of Fournier et al. to achieve the advantage of fitting one hockey helmet to various sized heads. With respect to claim 2 note the actuator as at 30. With respect to claim 3 note the outer access to the actuator 30 as per Figures 1 and 2 at 34, 36. With respect to claims 4 and 5 note the strap 30.

***Allowable Subject Matter***

7. Claims 9-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 6, 7, 29-44 and 47 are allowed.

***Conclusion***

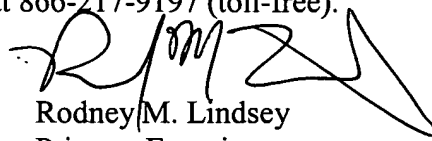
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the central member of Dallas et al., the rear padded members of Barson et al., Miller, Jones, Legendre, Jurga et al. and Lee et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3765

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

rml